



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 30, 1998

Mr. Robert Luna  
Law Offices of Robert E. Luna, P.C.  
4411 North Central Expressway  
Dallas, Texas 75205

OR98-3289

Dear Mr. Luna:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID#s 121111 and 121238. We have combined these requests under ID# 121111.

The Coppell Independent School District (the "district") received two requests for certain information regarding a former employee of the district. You submit information as responsive to the request but seek to withhold the information under sections 552.101 and 552.103 of the Government Code.

Section 552.103(a) excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 at 1 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You seek to withhold under section 552.103(a) a letter, your Exhibit B, from the district's superintendent to the individual named in the request for information. You advise that the "document contains information related to criminal litigation to which the former employee of the district that is the subject of the request is a party, as well as civil litigation by the District against the said former employee." Absent special circumstances, which you have not demonstrated here, once information has been obtained by the opposing party or criminal defendant in litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). As you have raised no other exception to the release of Exhibit B, you must release it.

You also seek to withhold under section 552.103(a), another document, your Exhibit C. You have provided documentation confirming the pendency of both civil and criminal litigation to which the document appears to relate. Accordingly, we find that you may withhold exhibit C under section 552.103(a).

We assume, however, that none of the information in Exhibit C has previously been made available to the criminal defendant/opposing party in the litigation in question. To the extent the defendant/opposing party has seen or had access to Exhibit C, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a). And again, absent special circumstances, once information has been obtained by the opposing party or criminal defendant in litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982).

You submit, as Exhibit D, material which you assert is protected by section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Section 552.101 requires withholding, *inter alia*, information made confidential by statute. Section 21.355 of the Education Code makes confidential "a document evaluating the performance of a teacher or administrator." We have examined Exhibit D and determined that it is subject to section 21.355. Therefore, you must withhold Exhibit D in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker  
Assistant Attorney General  
Open Records Division

WMW/ch

Ref: ID# 121111, 121238

Enclosures: Submitted documents

cc: Mr. R. G. Harrell  
548 W. Oak Grove  
Coppell, Texas 75019  
(w/o enclosures)